IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3554 OF 1991

Dwarkadas Tulsidas Dhokari,
residing at 24/B, Sudampuri,
Chandavarkar Cross Road No.1,
Borivli (West), Bombay-400 092. ....Petitioner

V/s.

1. State of Maharashtra
(Writ to be served on the
Secretary to the Government of
Maharashtra, Education And
Employment Department,
Mantralaya, Bombay-400 032.

2. The Deputy Director of Education,
Bombay Region, Dishna Vachha
Road, Churchgate, Bombay.

3. Babu Pannalal P. Jain High School,
Tambakata, Pydhonie,
Bombay-400 003.

4. Seth M.K. High School,
Borivli (West), Bombay-400 092.

5. Lilavati Lalji Dayalji High School,
S.V.P. Road, Bombay-400 004. ....Respondents

Mr.M.M. Vashi for the Petitioner.

Mr.S.M. Dandekar, A.G.P. for the State - Respondent Nos.1 and 2.

CORAM : S. RADHAKRISHNAN &
S.J. VAZIFDAR, JJ.
DATED : 15TH SEPTEMBER, 2004.

ORAL JUDGMENT : (PER S. RADHAKRISHNAN, J.) :

1. By this Petition the Petitioner is seeking payment of salary for the period 1st September, 1990 to 4th August, 1991 and also for proper computation of pension and post retirement benefits wherein the period between 1st September, 1990 to 4th August, 1991 should be treated as continuous service.

2. The Petitioner was appointed as an Assistant Teacher with Respondent No.5 - Lilavati Lalji Dayalji High School from 1966 till September, 1987. It appears that in September, 1987 when the Petitioner was rendered surplus in the said Lilavati Lalji Dayalji High School, the Petitioner was directed to be absorbed in Babu Pannalal Jain High School (B.P. Jain High School) at Pydhonie, Mumbai by the Education Inspector as per Rule 26 of The Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. The relevant portion of the said M.E.P.S. Rules reads as under :-

> **"26. "Retrenchment on account of abolition of posts** : (1) A permanent employee may be retrenched from service by the Management after giving him 3 months' notice, on any of the following grounds, namely :

(i) reduction of establishment owing to reduction in the number of classes or divisions ;

(ii) fall in number of pupils resulting in reduction of establishments ;

(iii) change in the curriculum affecting the number of certain category of employees ;

(iv) closure of course of studies;

(v) any other bona fide reason of similar nature.

(2) The retrenchment from service under sub-rule (1) shall be subject to the following conditions, namely :

(i) .....

(ii) .....

(iii) The employees from aided schools, whose services are proposed to be retrenched shall be absorbed by the Education Officer in the case of Primary and Secondary Schools or by the Deputy Director in the case of Higher Secondary Schools and Junior Colleges of Education. The order of absorption of such employees shall be issued by registered post acknowledgement due letter and till they are absorbed the Management shall not be permitted to effect retrenchment on account of any reasons mentioned in sub-rule (1)."

3. It appears that from September, 1987 till 31st August, 1990, the Petitioner has worked as an

Assistant Teacher in the said B.P. Jain High School wherein he has rendered surplus. Again pursuant to the order issued by the Education Inspector whereby the Petitioner was directed to be absorbed in Lilavati Lalji Dayalji High School from September, 1990. It appears that one Mrs.Rajgor was also rendered surplus and she was directed to be absorbed in Seth M.K. High School, Borivli and it appears that Mrs.Rajgor was interested in getting absorbed in Lilavati Lalji Dayalji High School and accordingly she was ordered to be absorbed in that school. It appears that Mrs.Rajgor got absorbed in the said Lilavati Lalji Dayalji High School, whereas the Petitioner was neither absorbed in Lilavati Lalji Dayalji High School nor even in Seth M.K. High School and ultimately on 27th September, 1990, again the Education Inspector wrote to the Principal of Seth M.K. High School that the Petitioner should be absorbed in the said school, which was not complied with. Thereafter the Petitioner reported at Vanita Vishram High School as per the Education Inspector’s order wherein also there was reduction in classes within two months as such the Petitioner would have been rendered surplus as such he was not allowed to join. Ultimately subsequent to the order passed on 8th April, 1991 by the Deputy Director of Education, the Petitioner finally joined duties in

CVOD Jain High School, Dongri, Mumbai with effect from 5th August, 1991.

4. The Petitioner seems to have continued in the said school and thereafter the Petitioner was absorbed in BPK Sahari Vidya Mandir and had worked upto 31st March, 1998 and retired with effect from 1st April, 1998.

5. There is an affidavit in reply on behalf of Respondent Nos.1 and 2 - State of Maharashtra, however, the aforesaid facts and circumstances are not controverted to the contrary. The issue involved in this Petition is whether the Petitioner is entitled to salary for the period 1st September, 1990 till 4th August, 1991. A bare perusal of the aforesaid Rule 26 of the M.E.P.S. Rules clearly indicates that it is the obligation of the State Government to absorb such teachers who have been rendered surplus and to issue them proper absorption order in an appropriate manner. In fact Rule 26 which clearly mentions that if such an absorption does not take place, till that time such a teacher cannot even be retrenched by the School itself wherein the teacher was rendered surplus. In the facts and circumstances mentioned hereinabove, it is clear that there is no fault on the part of the

Petitioner with regard to the aforesaid break in service and inspite of repeated orders from the Education Inspector, the concerned schools had not complied with the same and absorbed the Petitioner. Therefore, the Petitioner cannot be faulted with the same. In these facts and circumstances, the Petitioner is very much entitled to the salary for the aforesaid period 1st September, 1990 till 4th August, 1991.

6. As indicated above, as there is no artificial break in service, as it was not the fault of the Petitioner and the Petitioner was immediately directed to be absorbed and as such the period of 1st September, 1990 to 4th August, 1991 also ought to be taken into account for the purpose of computing the pension and post retirement benefits of the Petitioner.

7. In the above facts and circumstances, we direct Respondent Nos.1 and 2 to pay the salary payable to the Petitioner as an Assistant Teacher for the period 1st September, 1990 to 4th August, 1991 and also to compute the pensionary and post retirement benefits of the Petitioner as if he was in continuous service, including the period i.e. from 1st

September, 1990 to 4th August, 1991. The aforesaid arrears of salary for the period 1st September, 1990 to 4th August, 1991 shall be paid by Respondent Nos.1 and 2 along with interest at the rate of 9% p.a. within a period of eight weeks. Respondent Nos.1 and 2 shall also compute the proper pensionary benefits of the Petitioner taking into account the above period 1st September, 1990 to 4th August, 1991 as continuous service,d and pay the said benefits within a further period of four weeks.

8. Rule is made absolute in the above terms.

. Parties to act on an ordinary copy of this order duly authenticated by the Associate/Court Stenographer of this Court.

(S. RADHAKRISHNAN, J.)

(S.J. VAZIFDAR, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3554 OF 1991

DATE OF DECISION : 15TH SEPTEMBER, 2004.

For Approval and Signature :

HON'BLE MR.JUSTICE S. RADHAKRISHNAN.

HON'BLE MR.JUSTICE S.J. VAZIFDAR.

1. Whether Reporters of Local Papers may be allowed to see the judgement ?)

2. To be referred to be Reporter or not ?)